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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/005,682	12/05/2001	Matthew R. Hyre	5356-05	9587

7590 06/02/2004  
Emhart Glass Manufacturing Inc.  
89 Phoenix Avenue  
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EXAMINER

LOPEZ, CARLOS N

ART UNIT	PAPER NUMBER
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1731

DATE MAILED: 06/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/005,682

Applicant(s)

HYRE ET AL.

Examiner

Carlos Lopez

Art Unit

1731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 4 is/are rejected.
- 7) ☒ Claim(s) 3 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

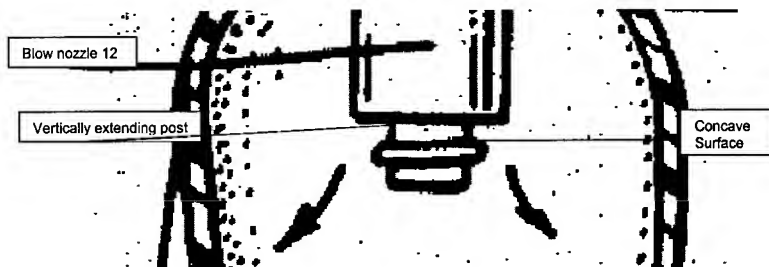
Claims 1-2 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rodriguez-Wong et al US 5,807,419 ('419) in view of Virog Jr. US 4,348,167 ('167). Rodriguez-Wong discloses a glass-forming machine in order to shape a glass parison in a blowing mold (Abstract). The claimed "a blow head assembly" is '419 element 50. The claimed "support means for supporting said blow head assembly" is deemed as lock 52 of Rodriguez-Wong disclosure. The "first displacement means for displacing said support means to displace said blow head assembly between a remote up position and an advanced down position" is shown by '419 as piston element 56. The claimed blow tube displaceable between an up and down position is shown by Rodriguez-Wong as element 30. The second displacement means for displacing said blow tube from the up position down to the down position is deemed as '419's cylinder piston assembly 20. Rodriguez-Wong is silent disclosing the blowing nozzle with an "air deflector having an annular, concave surface terminating at the top with a vertically extending post for deflecting air traveling axially down the blow tube uniformly radially outwardly." However, Virog Jr discloses a conventional blowing nozzle, element 12, as shown in figure 1 having an annular air deflector with concave surface terminating at the top with a vertically extending post. As noted by Virog, air is

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blown into the mold to force the parison against the inner walls of the mold and/or in order to help maintain the shape of the parison air is blown outwardly against upper edge of the parison (See Col. 1, lines 14-18 and 28-30). Thus in view of the teachings of Virog showing a conventional blow tube means having an annular air deflector with concave surface terminating at the top with a vertically extending post, a person of ordinary skill in the art at the time the invention was made would have been motivated to provide Rodriguez-Wong glass-forming machine with Virog Jr conventional blow tube in order to provide outwardly flow of air to maintain the shape of the parison as taught by Virog Jr.

Additionally, in regards to the claimed supporting frame, it would be expected that Virog Jr. provides a frame to hold the air deflector from falling down.

In regards to claim 2 the vertically extending post would is deemed as coaxial with the axis of the blow tube 12.



***Allowable Subject Matter***

Claim 3 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: The cited prior art fails to disclose "the open bottom of said blow tube has an annular recess and said supporting frame includes an annular flange to be press fit into the annular recess and a plurality of struts connecting the top of the vertically extending post to said annular flange."

***Response to Arguments***

Applicant's arguments filed on 2/10/04 have been fully considered but they are not persuasive.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In the instant case the rejection is based on Rodriguez-Wong et al in view of the teachings of Virog Jr. US 4,348,167. Applicant argues that Virog can't be appreciated because it is irrelevant to the instant invention, which is drawn to a glass parison not a plastic parison.

Rodriguez-Wong discloses an I.S machine for the shaping of glass and similar material. Since it is deemed that the term "similar material" includes plastic, one of ordinary skill in the art would appreciate the teachings of Virog, which is drawn to plastic

moulding. It is also noted that the claimed invention is not specifically limited to treating glass material and even if it were patentability would be based on the apparatus per se and not on the material being worked on.

Applicant argues that Virog's airflow is for shaping purposes as opposed to cooling purposes as instantly claimed. In response to said argument, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art (cooling of the blown parison) cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

Applicant also argues that Virog does not disclose an annular concave surface. Said argument is found unpersuasive. As shown in the figure above, which is a blow up of the nozzle 12, it explicitly shows a concave surface formed by a doughnut shaped ring annular to the vertical extending post.

Applicant also argues that Virog intends to blow air downwardly down the parison as oppose to radially outward. Figures 2-4 of Virog explicitly show arrows depicting the airflow as radially outward.

Additionally, after further review the previous double patenting rejection to claims 1-4 has been withdrawn.

### **Conclusion**

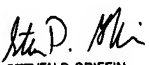
**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos Lopez whose telephone number is 571.272.1193. The examiner can normally be reached on Mon.-Fri. 8am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on 571.272.1189. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
STEVEN P. GRIFFIN  
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